(23)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 1210.

MINOLA TAMESA,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITIONER'S REPLY BRIEF ON PETITION FOR WRIT OF CERTIORARI.

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TABLE OF AUTHORITIES CITED.

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The conflict between the unappealed decision in United States v. Kuwabara[1] *and Fujii v. United States,*[2] *calls for the settling of that conflict by this court through the granting of certiorari.*

In the Petition for a Writ of Certiorari (Petition, p 6) it was urged that there was a critical conflict between the two decisions above named. This conflict, the Government, in its "Brief for the United States in Opposition" (p. 9), concedes. According to the Government, the unappealed decision of the United States District Court for the Northern District of California (Judge

[1]56 Fed. Supp. 716.

[2]R. 57.

Louis Goodman) is "untenable" (p. 9). In explaining why it permitted an "untenable" United States District Court decision, involving as important a matter as the enforcement of the Selective Training and Service Act to go unappealed, the Government states that, "After the institution of the Kuwabara prosecution it was ascertained from the armed forces that the defendants involved had been mistakenly designated as acceptable."

This explanation admits carelessness (in our opinion, inexcusable carelessness) in the administration of an important federal statute against persons of Japanese ancestry.

But of greater import is the statement by the Government: "But the Tule Lake Center is limited to persons, such as Kuwabara, who were disloyal to the United States and thus unacceptable for military service." (p. 9.)

The inference is left — and the impression is conveyed to this Court — that persons of Japanese ancestry, deemed "disloyal," are not, since the United States v. Kuwabara decision, being subjected to the Selective Training and Service Act or to criminal prosecution for its violation.

The fact is to the contrary. Thus there is now pending in the United States District Court for the District of Arizona a criminal prosecution against 100 persons of Japanese descent, charged with having violated the Selective Training and Service Act in having failed to comply with orders of their local draft boards. By far the majority of the 100 are persons of Japanese ancestry, whose loyalty the Government has questioned. By way of example, one of the defendants, now being prosecuted and tried on April 23, 1945, in an affidavit on file with the Clerk of the District Court for the District of Ari-

zona — an affidavit whose allegations have been unchallenged by the Government — recited that there was a finding made by the War Relocation Authority in his case that,

> "There is reasonable ground to believe that the issuance of leave would interfere with the war program or otherwise endanger the public peace and security"

and said affidavit further declares that he

> "was advised that he would not be permitted to leave the camp, (Poston Relocation Center) but that he would be transported to Tule Lake Relocation Center unless Tule Lake is over-crowded and there is not room for him or others from Poston seeking expatriation. He was so advised by a representative of the Family Welfare Division office of the War Relocation Authority at Poston.
>
> "The defendant is informed and believes and therefore alleges that the sole reason for his remaining at Poston Relocation Center, and for his not being removed to the Tule Lake Relocation Center was and is filled to capacity."[3]

In the face of the facts we have just outlined, the conclusion stated in our Petition seems to be warranted:

> "Moreover, Judge Goodman's unappealed decision resulted in a cessation of criminal prosecutions for

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[3]A certified copy of the affidavit of Kingo Tajii on file in *United States v. Ben Yumen, et al.*, United States District Court, District of Arizona, No. 7071, has been lodged with the Clerk of this Court. This Court may take judicial notice of the record of the United States District Court. (*Cf. Bowles v. United States,* 319 U. S. 33.)

violations of the Selective Training and Service Act, of persons residenced at the Tule Lake Relocation Center. At the same time, persons of Japanese descent residenced in other Relocation Centers, including those at Heart Mountain, have been prosecuted for such violations. This difference in treatment of persons of Japanese descent has led many Japanese Americans throughout the Relocation Centers, other than those at Tule Lake, to the belief that the Selective Training and Service Act is being enforced by the government in an unevenhanded manner, determined solely by the *place* of detention — a criterion having no basis in law or in fair dealing. And it is a fact, of common knowledge and of which this Court may take judicial notice, that when Tule Lake became filled to capacity, Japanese located in other Relocation Centers were detained at such other Centers, on the same terms as those detained at Tule Lake, the removal to Tule Lake or the remaining at such other Relocation Centers, being therefore conditioned solely upon the availability of accommodations at Tule Lake." (Petition, p. 7-8.)

Indeed, there is no express denial in the Government's memorandum of the claim made by the Petitioner that the Selective Training and Service Act has been enforced against persons of Japanese ancestry, detained at the various Japanese Relocation Centers "in an unevenhanded manner" (Petition, p. 8).[4]

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[4]The classic phrase is "with an evil eye and an unequal hand." (*Yick Wo v. Hopkins*, 118 U. S. 356.)

Conclusion.

Only by granting certiorari and by deciding the issue raised by the Petition will clarification and justice displace present confusion and inequity attending the enforcement of the Selective Training and Service Act against a minority group in our midst—a minority racial group that has already been visited with sufficient confusion and inequity, in other particulars not now necessary to detail.

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